



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-962]

Certain Resealable Packages with Slider Devices

Commission Decision to Review-in Part an Initial Determination Finding no Violation of Section 337; On Review, to Modify-in-Part the Initial Determination and to Take no Position on One Issue; Affirmance of the Finding of no Violation and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337. On review, the Commission has determined to modify-in-part the ID and to take no position with respect to one issue. The Commission has also determined to affirm the ID’s finding of no violation of section 337 and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS)

at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 20, 2015, based on a complaint filed on behalf of Reynolds Presto Products Inc. of Appleton, Wisconsin. 80 FR 42839-40. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation in the United States, the sale for importation, and the sale within the United States after importation of certain resealable packages with slider devices by reason of infringement of certain claims of U.S. Patent Reexamination Certificate No. 6,427,421 and U.S. Patent Nos. 6,524,002 and 7,311,443. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Intoplast Group, Ltd. of Livingston, New Jersey and Minigrip, LLC of Alpharetta, Georgia as respondents. The Office of Unfair Import Investigations is participating in this investigation.

On March 14, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 8) granting complainant's motion for summary determination that it has satisfied the economic prong of the domestic industry requirement under 19 U.S.C. sections 1337(a)(3)(A) and (B) for all asserted patents.

On June 20, 2016, the ALJ issued his final ID finding no violation of section 337. The ALJ found that none of respondents' accused products infringe any of the asserted patents. He also found that the technical prong of the domestic industry requirement had been satisfied with respect to the '443 patent, but not with respect to the '421 or '002 patents. The ALJ also issued his recommended determination (RD) on remedy and bond. The ALJ recommended, in the event the Commission finds a violation, that both limited exclusion and cease and desist orders should

issue against infringing products and each respondent.

On July 6, 2016, complainant and respondents each filed a petition for review of the final ID. On July 14, 2016, complainant, OUII, and respondents each filed a response to the opposing petition.

Having examined the record of this investigation including the ID, the parties' petitions for review, and the responses thereto, the Commission has determined to review-in-part the final ID. Specifically, the Commission has determined to review (1) the ID's finding of no invalidity of claim 1 of the '443 patent under 35 U.S.C. 102(b); and (2) the ID's analysis regarding infringement of the '421 patent. The Commission has determined not to review the remainder of the final ID.

On review with respect to issue (1), the Commission determines to take no position on the ID's finding of no invalidity of claim 1 of the '443 patent under § 102(b). On review with respect to issue (2), the Commission modifies-in-part the final ID. Specifically, the Commission supplements the ID's finding of no infringement under the doctrine of equivalents of asserted claim 39 of the '421 patent with respect to the "feeding a zipper sheet" limitation (ID at 45-49) with the following:

Presto's doctrine of equivalents arguments are so broad that they read the limitation "releasably adhered" out of asserted claim 39. "Under the all elements rule, there can be no infringement under the doctrine of equivalents if even one limitation of a claim or its equivalent is not present in the accused device. . . . Thus, if a court determines that a finding of infringement under the doctrine of equivalents 'would entirely vitiate a particular claim[ed] element,'

[as the case is here with respect to the “releasably adhered” limitation] then the court should rule that there is no infringement under the doctrine of equivalents.” *Lockheed Martin Corp. v. Space Systems/Loral, Inc.*, 324 F.3d 1308, 1321 (Fed. Cir. 2003) (citations omitted).

The Commission therefore affirms the ID’s finding of no violation of section 337 and terminates the investigation.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission’s Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: August 19, 2016.

Lisa R. Barton,
Secretary to the Commission.

[FR Doc. 2016-20357 Filed: 8/24/2016 8:45 am; Publication Date: 8/25/2016]